

EVELINE VALENTINE and : **No. 3:01cv1656**
LELAND VALENTINE, :
Plaintiffs : **(Judge Munley)**

**SOWBHAGYA SONTNINENI, :
BROOME NEUROSCIENCES, P.C., :
FERROL LEE. M.D., ECKERD :
STORE, #5054, ECKERD :
CORPORATION, J.C. PENNY CO., :
EDWARD L. JONES, M.D., :
BARBARA HARVEY, M.D., :
RANI KAPUR-PADO, D.O., :
MICHAEL RUPP, M.D., :
PRAMOD DESHMUKH, M.D. :
STEPHANIE L. GOODWIN, D.O., :
ARUN SHERMA, M.D., DEBORAH :
BRADLEY, R.N., V. GRAYDON, R.N., :
GUTHRIE CLINIC, INC., GUTHRIE :
CLINIC, LTD, GUTHRIE CLINIC, a :
Professional Corporation, GUTHRIE :
CLINIC GROUP PRACTICE :
PARTNERSHIP, L.L.P., GUTHRIE :
HEALTHCARE SYSTEM, ROBERT :
PACKER HOSPITAL, :
Defendants**

Two of the defendants in the above-captioned action have brought a motion to dismiss plaintiffs' complaint against them for lack of personal jurisdiction. The plaintiffs are Eveline Valentine and her husband Leland Valentine, (collectively "plaintiffs"). The moving defendants are Sowbhagya Sonthineni, M.D., and Broome Neurosciences, P.C., (collectively

“defendants” or “moving defendants”). For the reasons that follow, we will grant defendants’ motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2).

I. Background

The facts relating to defendants’ motion to dismiss pursuant to Rule 12(b)(2) are as follows: Defendant Sonthineni is a neurologist who treated Plaintiff Eveline Valentine from 1987 until 1992. (Compl. ¶ 25; Sonthineni Aff. ¶ 6). Sonthineni is a New York resident and licensed to practice medicine in New York. (Compl. ¶ 5). She is not licensed to practice medicine in Pennsylvania. (Sonthineni Aff. ¶ 4). Sonthineni was licensed to practice medicine in Pennsylvania from July of 1984 until of July of 1985 when she was a fellow at the Crozer-Chester Medical Center in Chester. (Sonthineni Aff. ¶ 5). Thereafter, Sonthineni never renewed her medical license in Pennsylvania. (Sonthineni Aff. ¶ 5).

Sonthineni is also the president and sole shareholder of Broome Neurosciences. (Sonthineni Aff. ¶ 12). Defendant Broome Neurosciences is a professional corporation formed under the laws of New York and doing business in that state. (Compl. ¶ 5; Sonthineni Aff. ¶ 12). Broome Neurosciences is not qualified to do business in Pennsylvania and does not seek business from the Commonwealth through advertising or otherwise. (Sonthineni Aff. ¶¶ 7-12).

Plaintiffs are residents of New Hampshire. (Compl. ¶ 3). Plaintiffs allege that defendants, in conjunction with non-moving defendants, were negligent in their medical treatment of Eveline Valentine. (Compl. ¶¶ 79-92). Plaintiffs were Pennsylvania residents

when Eveline Valentine was under defendants' treatment. (Sonthineni Aff. ¶ 6).

Defendants, however, treated Eveline Valentine only in New York. (Sonthineni Aff. ¶ 6).

Plaintiffs filed their complaint against the moving and other defendants on August 28, 2001, asserting jurisdiction based upon diversity of citizenship. (Compl.). On September 24, 2001, Defendants filed the instant motion. (Doc. 6). We ordered plaintiffs to respond to defendants' motion on December 18, 2001. (Doc. 56). Plaintiffs filed a brief in opposition to defendants' motion on January 7, 2002. (Doc. 61). Defendants filed a reply brief on January 24, 2002. (Doc. 62). We heard argument on the instant motion on April 24, 2002. (Doc. 64).

II Jurisdiction

We exercise jurisdiction over this case pursuant to the diversity statute. 28 U.S.C. § 1332. Plaintiffs are New Hampshire citizens. Moving defendants are New York citizens and all other defendants are Pennsylvania citizens. The amount in controversy exceeds \$75,000. Because the Court is sitting pursuant to its diversity jurisdiction, the substantive law of Pennsylvania shall apply. Chamberlain v. Giampapa, 210 F.3d 154, 158 (3d Cir. 2000) (citing Erie R.R. v. Tompkins, 304 U.S. 64, 78 (1938)).

III Standard of Review

In deciding a motion to dismiss for lack of personal jurisdiction, we accept the plaintiff's allegations as true. Carteret Savings Bank, FA v. Shushan, 954 F.2d 141, 142 (3d Cir. 1992). Once a defendant has filed a motion to dismiss pursuant to Rule 12(b)(2),

however, the plaintiff bears the burden of proving, either by sworn affidavits or other competent evidence, sufficient contacts with the forum state to establish personal jurisdiction. North Penn Gas Co. v. Corning Natural Gas Corp., 897 F.2d 687, 689 (3d Cir. 1990). Under the Federal Rules of Civil Procedure, district courts are authorized to exercise personal jurisdiction over non-residents to the extent permissible under the law of the state in which the district court is located. FED. R. CIV. P. 4(e); North Penn Gas, 897 F.2d at 689. The Pennsylvania Long Arm Statute permits a court to exercise jurisdiction over non-resident defendants “to the fullest extent allowed under the Constitution of the United States and [jurisdiction] may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.” 42 PA CONS. STAT. § 5322(b). The Pennsylvania Long Arm Statute is coextensive with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Mellon Bank (East) PSFS v. Farino, 960 F.2d 1217, 1221 (3d Cir. 1992).

A district court may assert either general or specific jurisdiction over a non-resident defendant. Id. Specific jurisdiction arises from a non-resident defendant’s forum related activities. Id.; see also 42 PA. CONS. STAT. § 5322(a-c) (outlining specific but not exclusive bases for exercise of specific jurisdiction under Pennsylvania’s long arm statute). To prove specific jurisdiction, “a plaintiff must show that the defendant has minimum contacts with the state ‘such that the defendant should reasonably anticipate being haled into court there.’” North Penn Gas, 897 F.2d at 690 (quoting World-Wide Volkswagen Corp. v. Woodson, 444

U.S. 286, 297 (1980)); § 5322(b). General jurisdiction applies where a plaintiff's claim arises from a non-resident defendant's out-of-forum activities. Id. at 690 n.2. Under Pennsylvania law, to assert general jurisdiction over a corporation or partnership, a plaintiff bears the burden of proving incorporation or formation in the Commonwealth, consent to suit, or systematic and continuous contacts with the Commonwealth. PA. 42 CONS. STAT. § 5301(a)(2-3). To assert general jurisdiction in Pennsylvania over an individual, a plaintiff bears the burden of proving the individual's presence or domicile in the Commonwealth at the time of service, or the individual's consent to suit. 42 PA. CONS. STAT. § 5301(a)(1).

IV Discussion

A. Personal Jurisdiction

In the present case, defendants argue that we lack personal jurisdiction over them. Plaintiffs counter that we may exercise specific jurisdiction over defendants pursuant to either 42 PA. CONS. STAT. § 5322(a)(4) or 42 PA. CONS. STAT. § 5322(b).¹ We hold that defendants are not subject to the jurisdiction of this Court.

Plaintiffs allege that defendants negligently prescribed medication and continued to negligently treat Eveline Valentine in New York and that the effects of that negligence were felt in Pennsylvania. Thus, plaintiffs state that we have personal jurisdiction over the defendants under section 5322(a)(4). Section 5322(a)(4) provides for Pennsylvania's exercise of jurisdiction over defendants who commit tortious acts or omissions outside of the

¹ Plaintiffs do not contend that we have general jurisdiction over the moving defendants, and our review of the record does not indicate otherwise.

Commonwealth when the effects of such acts or omissions are felt within the Commonwealth.²

In-forum injury resulting from medical care provided outside of the Commonwealth is not a basis for the exercise of personal jurisdiction under section 5322(a)(4). See Holben v. Cunningham, 1995 WL 3683 12, at *3-4 (E.D. Pa. June 21, 1995) (holding Pennsylvania could not exercise personal jurisdiction over New Jersey doctor after a hair transplant performed in New Jersey resulted in subsequent harm suffered in Pennsylvania); Jamerson v. Buffalo Gen. Hosp., 1995 WL 904576, at *3-4 (W.D. Pa. March 14, 1995) (holding that complications felt in Pennsylvania after surgery in New York were not grounds for exercise of personal jurisdiction over New York hospital).

The present case differs from Holben and Jamerson in that no allegedly negligent medical procedure was performed, as in those cases. Instead, plaintiffs allege that defendants negligently prescribed medications to Plaintiff Eveline Valentine and did not properly monitor her reaction to those medications over an extended period of time. Nonetheless, plaintiffs' claim is that defendants negligently provided substandard medical care and that the results of that care, taking harmful medication and its side effects, were felt in Pennsylvania. For the purposes of exercising personal jurisdiction over a non-forum medical provider, we see no distinction between harm suffered in Pennsylvania as a consequence of out-of-state

² Section 5322(a)(4) reads, in pertinent part: (a) General Rule - A tribunal of this Commonwealth may exercise personal jurisdiction over a person . . . who acts directly or by an agent, as to a cause of action or other matter arising from such person: (4) Causing harm or tortious injury in this Commonwealth by an act or omission outside of this Commonwealth.

surgery and harm suffered in Pennsylvania as a consequence of out-of-state clinical treatment. In either case, the actions of the medical provider are not directed at the forum. Accordingly, we are unable to exercise jurisdiction over defendants pursuant to section 5322(a)(4).

Section 5322(b) does not provide an alternative avenue for the exercise of personal jurisdiction over defendants. Section 5322(b) permits Pennsylvania courts to exercise personal jurisdiction over non-resident defendants “to the fullest extent allowed under the Constitution . . . and may be based on the most minimum contact with the Commonwealth allowed under the Constitution.” § 5322(b). To assert jurisdiction on the basis of minimum contacts in this case, we must find that defendants purposefully availed themselves of the privileges and protections of Pennsylvania law by doing business in the Commonwealth. See Pennzoil Prods. Co. v. Colelli & Assocs., Inc., 149 F.3d 197, 203 (3d Cir. 1998) (discussing application of the minimum contacts doctrine).

Plaintiffs have not established that defendants have minimum contacts with Pennsylvania. Defendant Sonthineni is a New York resident who is licensed to practice medicine in New York. (Sonthineni Aff. ¶ 1). She has no license to practice medicine in Pennsylvania. (Sonthineni Aff. ¶ 4). Additionally, there is no evidence that she solicits patients from Pennsylvania or otherwise has purposefully availed herself of the privileges of doing business in the Commonwealth. Sonthineni does have Pennsylvania resident patients; however, these patients make up a small percentage of her neurology practice and she has

treated and treats all of her patients, including Eveline Valentine and other Pennsylvania patients, in New York. (Sonthineni Aff. ¶ 10).

Defendant Broome Neurosciences is a New York corporation. (Sonthineni Aff. ¶ 12). It is not qualified to do business in Pennsylvania and has not conducted business in the Commonwealth. (Sonthineni Aff. ¶ 12). Moreover, none of Broome Neurosciences's present or past members have conducted business in Pennsylvania on its behalf. (Sonthineni Aff. ¶ 12). In sum, defendants have not purposefully availed themselves of the privileges and protections of Pennsylvania law. We are unable, therefore, to exercise jurisdiction over defendants pursuant to section 5322(b).

B. Severance and Transfer of Claims Against New York Defendants

Plaintiffs ask for transfer of this case to the United States District Court for the Northern District of New York if we find, as we have, that we cannot exercise personal jurisdiction over the moving defendants. It is not clear whether any federal judicial district could exercise personal jurisdiction over all of the defendants in this case and transfer of the entire case, therefore, is not possible. 28 U.S.C. § 1631. Personal jurisdiction over the moving defendants, however, would lie in the Northern District of New York as they are residents of Broome County, New York. 28 U.S.C. § 1391, 28 U.S.C. § 112.

Nonetheless, we cannot sever the claims against the moving defendants from the existing complaint and transfer them to the Northern District of New York.³ Pursuant to

³ Counts I, II, III, and XXXII of plaintiffs' complaint are either in whole or in part applicable to the moving defendants.

Rule 21 of the Federal Rules of Civil Procedure, severance and transfer of claims against defendants is permissible when the defendants are peripherally connected to the dispute in question. 28 U.S.C. § 1406(a); FED. R. CIV. P. 2; St. Paul Fire & Marine Ins. Co. v. Servidone Constr. Corp., 778 F.Supp. 1496, 1508-1509 (D. Minn. 1991); Thee v. Marvin Glass & Assocs., 412 F.Supp. 1116, 1119 (E.D.N.Y. 1976); 15 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE 2d §§ 3827, 3845. In this case, however, moving defendants are inextricably intertwined in plaintiffs' suit and are defendants in cross-claims filed by other defendants in this action. Severance of the moving defendants would require plaintiffs' suit and the attendant cross-claims to be litigated in two districts at the same time. The complications involved in such a severance and transfer outweigh any potential benefits. We will, therefore, deny plaintiffs' request for severance and transfer of their claims against the moving defendants. An Appropriate order follows.

10